

EXHIBIT 49

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STAR AUTO SALES OF BAYSIDE, INC.
(d/b/a STAR TOYOTA OF BAYSIDE),
STAR Auto Sales OF QUEENS, LLC
(d/b/a STAR SUBARU), STAR HYUNDAI
LLC (d/b/a STAR HYUNDAI), STAR
NISSAN, INC. (d/b/a STAR NISSAN),
METRO CHRYSLER PLYMOUTH INC. (d/b/a
STAR CHRYSLER JEEP DODGE) STAR Auto
SALES OF QUEENS COUNTY LLC (d/b/a
STAR FIAT) and STAR AUTO SALES OF
QUEENS VILLAGE LLC (d/b/a STAR
MITSUBISHI),

Plaintiffs,

-against-

VOYNOW, BAYARD, WHYTE and COMPANY
LLP, HUGH WHYTE, and RANDALL
FRANZEN,

Case No.
18-cv-05775
(ERK) (TAM)

Defendants.

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December 14, 2023
8:37 a.m.

Remote Videotaped Deposition of STEPHEN J.
SCHERF, taken by Plaintiffs, pursuant to Notice,
held via Zoom before Lisa Hiesiger, a Shorthand
Reporter and Notary Public within and for the
State of New York.

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2 A P P E A R A N C E S :

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Also Present:

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JACQUELINE CUTILLO

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HUGH WHYTE

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JAMES LAUGHLIN, Videographer

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2 IT IS HEREBY STIPULATED AND AGREED, by and
3 between counsel for the respective parties hereto,
4 that the filing, sealing and certification of the
5 within deposition shall be and the same are hereby
6 waived;

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8 IT IS FURTHER STIPULATED AND AGREED that all
9 objections, except as to form of the question, shall
 be reserved to the time of the trial;

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11 IT IS FURTHER STIPULATED AND AGREED that the
12 within deposition may be signed before any Notary
13 Public with the same force and effect as if signed and
 sworn to before the Court.

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2 They may be doing work to ensure that items of
3 income and expense are properly treated on the
4 tax return, which is what I saw Voynow do in this
5 case. But they were preparing a tax return.

6 Q. Your report at page 8 says that "As
7 discussed previously, plaintiffs engaged Voynow
8 to provide certain accounting services spanning a
9 number of years. These engagements primarily
10 included the preparation of filing of tax
11 returns." Do you see that?

12 A. Yes.

13 Q. So what did Voynow do secondarily?

14 A. Secondarily --

15 MS. FITZGERALD: Object to form.

16 A. It did certain special accounting
17 services that were billed separately like doing a
18 DOL audit, a Department of Labor audit, or
19 training the new controller Jackie Cutillo or
20 doing a sales tax audit. My review of the
21 records indicated that those were billed
22 separately as basically separate accounting
23 matters when they were done. But all of the
24 other bills were related to specifically the
25 preparation of the tax returns.

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2 Q. I'm sorry, there's an engagement
3 letter for the tax services?

4 A. Correct.

5 Q. You're saying unsigned letter?

6 A. Yes, there's an unsigned letter for
7 the tax engagement services. There are e-mails
8 or billing records that describe the scope of
9 certain other services that were provided, those
10 would have been consulting services by
11 definition, and the standards essentially don't
12 require an engagement letter for that. That
13 understanding can be an oral understanding as to
14 what you're doing if somebody says to you come up
15 and oversee this sales tax audit, then you do
16 that and then you bill them separately.

17 So there is in some cases e-mails or
18 are billing records or conversations that I saw
19 people testify about what other work was done
20 that was agreed to between the plaintiffs and
21 Voynow. So I don't know how else to answer your
22 question.

23 Q. Mr. Scherf, other than tax review and
24 audit engagements, is it fair to say that all
25 other engagements of an accounting firm fall

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2 her findings?

3 MS. FITZGERALD: Object to form.

4 A. The accountant could do one of two
5 things. Typically the accountant would provide
6 an oral report, which is very common, or a
7 written report of the findings that would
8 conclude the engagement. So a lot of times I'm
9 involved in a consulting situation and an oral
10 report is just fine with the client and I
11 generate an invoice.

12 Q. And the invoice would indicate the
13 services that you provided in the matter, you
14 wouldn't do any more work on that matter?

15 A. Correct, I would not do additional
16 work on the matter. It would be done, the
17 invoice would conclude the services that were
18 provided, right.

19 Q. Here the special accounting services
20 invoices were not -- did not clearly specify the
21 work that was done, correct?

22 A. Look, it says that they're special
23 accounting services, but a lot of cases based
24 upon my knowledge and review and review of the
25 documents in the record, significant amounts of

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2 those were like tax audits or something like
3 that, and so there would be a specific time and
4 an end to that tax audit, for example, or DOL
5 audit or when Voynow provided consulting services
6 for training, the new controller. So there would
7 be a start and an end to each of those
8 engagements that would be clear because they
9 would just start and end.

10 Q. A consulting engagement could be
11 ongoing, correct?

12 A. Look, theoretically it could, but you
13 would anticipate that it would be done in phases
14 and so that at the end of each phase either a
15 written or oral report would be provided to the
16 client to tell them the progress or what the
17 observations were during that consulting
18 engagement.

19 Q. I want to refer you to Exhibit 204,
20 this is a new exhibit.

21 (Exhibit 204, Nissan Rebate and
22 Incentive Schedule 21 Bates stamped Voynow
23 006616, was so marked for identification,
24 as of this date.)

25 Q. Mr. Scherf, I show you what has been